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MEMORANDUM

*Income Tax Determinations**A-Z**Leon, Morris*

TO: The State Tax Commission

FROM: Solomon Sien, Hearing Officer

SUBJECT: MORRIS LEON
Assessment #B-344104 - 1956

The issues involved herein are (a) whether or not expenses in connection with the sale of real property which were deducted from normal income by the taxpayer were properly credited as expenses of sale for capital gain tax purposes and disallowed as deductions from normal income by the State Tax Commission, and (b) whether an amount of \$750, alleged by the taxpayer to be an "expense in connection with termination of contract" and deducted by the taxpayer from normal income, was properly disallowed in its entirety by the State Tax Commission.

The taxpayer was the owner in fee of real property located at 9th Street near 37th Avenue, Long Island City, Queens, N. Y. He was also an officer and owner of 50% of the shares of capital stock of Ansis Motor Lines, Inc., a domestic corporation organized under the laws of the State of New York, engaged in the trucking business. On May 1, 1953, the taxpayer entered into an agreement of lease of the Long Island City property with Ansis Motor Lines, Inc. for a term of 21 years. In October 1956, the taxpayer (the lessor) entered into an agreement with Ansis Motor Lines, Inc. (the lessee) for the cancellation of the lease and surrender of the premises and pursuant thereto paid the lessee \$4,000. The taxpayer further paid the amount of \$750 to the remaining stockholders of the corporation in connection with the purchase by him of the balance of capital stock from such stockholders. On November 15, 1956 he sold the property, reporting the sale as a capital transaction.

On his return for 1956, the taxpayer reported salary income, interest income, rental income and capital gain on installment sale of real property. He deducted from normal income \$1,650 for legal expense and \$4,000 for cancellation of lease mentioned above. In addition, he also deducted \$750 for "expense incurred in connection with income not reimbursed" and \$750 "expense in connection with termination of contract." On February 3, 1959, the Income Tax Bureau made an additional assessment disallowing the above-mentioned deductions but credited and allowed the aforesaid amounts of \$1,650 and \$4,000 as additional expenses of sale in recomputing the capital gain tax and imposed additional tax in the amount of \$360.68.

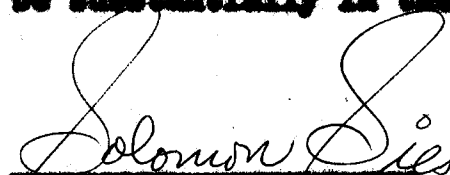
On January 29, 1960 a cancellation was issued to the extent of \$26.25 based on an allowance of \$750 alleged by the taxpayer to be an "expense incurred in connection with income not reimbursed." This amount was allowed as a deduction from normal income as an expense of seeking new investments in connection with the taxpayer's rental and interest income.

The deduction of the other \$750 alleged by the taxpayer to be an expense in connection with termination of contract was disallowed in its entirety since it represented purchases of additional capital stock.

The Board of Tax Appeals has consistently held that a lease is property and that therefore an amount paid by a lesser to a lessee for surrender of the leasehold is not deductible as an ordinary business expense, but only as a capital expenditure recoverable over the life of the lease acquired. Berland v. Commissioner, 27 B.T.A. 538; Business Real Estate Trust of Boston v. Commissioner, 25 B.T.A. 191; Breitfelder v. Commissioner, 21 B.T.A. 789; Millier v. Commissioner, 10 B.T.A. 303.

I am of the opinion that the deduction of legal expense involved the negotiation of the sale of the Long Island City property and that the amount claimed plus the amount paid for surrender of the leasehold were properly credited as additional expense of sale in the recomputation of capital gain tax; that the assessment, as partially cancelled, should be sustained.

For the reasons stated above, I recommend that the determination of the Tax Commission in this matter be substantially in the form submitted herewith.


Hearing Officer

May 16, 1968

6-19-68

STATE OF NEW YORK
STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATION

OF

MORRIS LEON

**FOR REVISION OR REFUND OF PERSONAL
INCOME TAXES UNDER ARTICLE 16 OF
THE TAX LAW FOR THE YEAR 1936**

Morris Leon, having filed an application for revision or refund of personal income taxes under Article 16 of the Tax Law for the year 1936 and a hearing having been held in connection therewith at the office of the State Tax Commission, 80 Centre Street, New York, New York on the 9th day of November 1936 before Solomon Sles, Hearing Officer of the Department of Taxation and Finance, at which hearing the taxpayer appeared personally and was represented by Leon Schwartz, CPA, testimony having been taken and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That during the year involved and prior thereto, the taxpayer was the owner in fee of various parcels of real property located in New York State at Jamaica, Farmingdale, Hicksville and Long Island City; that the taxpayer filed a New York State income tax return for the year 1936 in which he reported salary income and interest income; he further reported rental income from the last two parcels located at Hicksville and Long Island City and capital gains on installment sale of the parcels of real property located at Jamaica, Farmingdale and Long Island City.

(2)

(2) That the taxpayer acquired the Long Island City property (located at 9th Street near 37th Avenue) in 1953; that the taxpayer prior to and during the year 1956 was the president and owner of 50% of the shares of stock of Annie Motor Lines, Inc., a domestic corporation organized under the laws of the State of New York engaged in the trucking business at both Hicksville and Long Island City; that on May 1, 1953, the taxpayer entered into an agreement of lease with Annie Motor Lines, Inc. as a tenant of the aforesaid premises located at Long Island City for a term of 21 years at a rental of \$9,000 per annum.

(3) That in October 1956 the taxpayer paid to the aforesaid corporation the amount of \$4,000 in consideration for the cancellation of the lease and surrender of the premises; that in November 1956 the taxpayer sold the real property on an installment basis and reported the profit realized therefrom as a capital gain; that on his return for the year 1956 the taxpayer deducted the \$4,000 from the rental income reported by him from the aforesaid property.

(4) That the taxpayer further deducted from rental income the amount of \$1,650 which was paid by him in connection with the sale of the parcels including the aforesaid Long Island City property.

(5) That in October 1956 the taxpayer paid the amount of \$750 to the remaining stockholders of the aforesaid corporation in connection with the purchase by him of the balance of the capital stock from such stockholders; that the taxpayer reported this amount on his return as an additional deduction from his normal income, alleging such amount to be an "expense in connection with termination of contract".

(3)

(6) That, in addition, the taxpayer also reported on his return an additional amount of \$750 which he deducted from his normal income on the ground that this amount was "an expense incurred in connection with income not reimbursed."

(7) That on February 5, 1939 the Department of Taxation and Finance made an additional assessment against the taxpayer for the year 1936 (Assessment 62-544104) disallowing all of the above deductions from normal income but allowing the amount of \$1,650 legal fees and the amount of \$4,000 paid for cancellation of the lease as additional expenses incurred in the sale of the real property for capital gains purposes; that, accordingly, the capital gain tax was recomputed and net additional taxes in the amount of \$360.68 was imposed.

(8) That on January 29, 1940 a partial cancellation in the amount of \$26.25 was issued based upon an allowance in the amount of \$750 deducted from normal income by the taxpayer as "expenses incurred in connection with income not reimbursed" on the ground that this amount reported expenses of seeking new investments in connection with the taxpayer's rental and interest income.

Based upon the foregoing findings and all of the evidence presented herein,

The State Tax Commission hereby
DETERMINES:

(A) That the amount of \$4,000 paid by the taxpayer for the cancellation of the lease was not deductible as an ordinary expense but only as a capital expenditure and properly credited and allowed in connection with the gain on the sale of said property.

(4)

(B) That the deduction of \$1,630 for legal expenses in connection with the sale of the property of the taxpayer was not deductible from normal income but was properly credited and deductible as an additional expense of the sale of said property.

(C) That the deduction of \$730 representing payments made to the remaining stockholders for surrender of their shares of stock in Annie Motor Lines, Inc. was not deductible as an ordinary business expense and was properly disallowed since it constituted the cost of purchasing additional stock.

(D) That, accordingly, the additional assessment made against the taxpayer for the year 1936 (Assessment #12-244124) partially cancelled to the extent of \$25.23, is correct; that the same does not include any tax or other charge which could not have been lawfully demanded and that the taxpayer's application for revision or refund filed with respect thereto be and the same is hereby denied.

DATED: Albany, New York on the 19th day of July , 1968.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

~~COMMISSIONER~~

/s/

A. BRUCE MANLEY

~~COMMISSIONER~~

/s/

SAMUEL E. LEPLER

~~COMMISSIONER~~